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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/928,272 09/12/97 ISKRA

M P-3818

EXAMINER

QM12/0928

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CHO, D

ART UNIT

PAPER NUMBER

3762

DATE MAILED:

09/28/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/928,272

Applicant(s)

Iskra

Examiner

David J. Cho

Group Art Unit

3762



☒ Responsive to communication(s) filed on the amendment filed 8/11/99.

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1, 2, and 4-18 is/are pending in the application.

Of the above, claim(s) 10-18 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1, 2, and 4-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 3762

DETAILED ACTION

1. The request filed on 8/11/99 for a Continued Prosecution Application (CPA) under 37 CFR 1.53(d) based on parent Application No. 08/928,272 is acceptable and a CPA has been established. An action on the CPA follows.

Election/Restriction

2. Claims 10-18 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b) as being drawn to a non-elected claims. Election was made **without** traverse in Paper No. 3.

This application contains claims 10-18 drawn to an invention nonelected with traverse in Paper No. 3. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3762

4. Claims 1-2 and 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burns '5,458,854.

Burns teaches a collection assembly useful for collecting small quantities of blood, wherein the closed bottom end 38 represents a partition member, see figure 1. In regards to claim 2, see figure 1; element 47. In regards to claim 4, the closed bottom end 38 clearly is integral with the housing sidewall 22. With respect to claim 7 and 8, see column 5, lines 43-49. With respect to claim 9, it is observed that applicant's specification does not disclose that the dimensions solves any particular problem or produces any unexpected result and therefore such is merely a matter of engineering design choice, and thus does not serve to patentably distinguish over the prior art. However, Burns does not disclose the false bottom end comprising an open bottom end extending from an arcuate shoulder. It would have been obvious matter of design choice to form the false bottom into an arcuate shape, since such a modification would have involved a mere change in the shape of the component. A change in size is generally recognized as being within the level of ordinary skill in the art.

5. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to David J. Cho, whose telephone number is (703) 308-0073. The Examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Corrine McDermott, can be reached on (703) 308-2111. The fax number for this Group is (703) 305-3590 or x3591.


Application/Control Number: 08/928,272

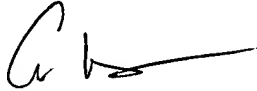
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Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.

david j. cho


Patent Examiner
September 27, 1999


CORRINE McDERMOTT
PRIMARY EXAMINER